STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-052

February 18, 2004

VERIZON MAINE, Request for Approval of Interconnection Agreement to Amend the Interconnection Agreement Dated July 17, 1997 between Verizon Maine and MCImetro Access Transmission Services LLC and New England Fiber Communications LLC (Amendment No. 2)

NOTICE OF OPPORTUNITY TO PROVIDE FURTHER COMMENTS

I. BACKGROUND

On January 23, 2004, Verizon New England Inc. d/b/a Verizon Maine (Verizon Maine) filed with this Commission an agreement to amend the Interconnection Agreement dated July 17, 1997 between Verizon Maine and MCImetro Access Transmission Services LLC and New England Fiber Communications LLC (Amendment No. 2) (MCI), pursuant to section 252 of the Telecommunications Act of 1996. Section 252(e)(1) provides that:

> [a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

Section 252(e)(2) establishes standards for state review of submitted agreements. State commissions may reject agreements adopted by negotiation only if discriminatory or inconsistent with the public interest. See § 252(e)(2)(A). State commissions must act to approve or reject an agreement adopted by negotiation within 90 days after submission by the parties.

On February 2, 2004, the Administrative Director of the Commission issued a Notice of Agreement and Opportunity to Comment. The Commission received a comment from Level 3 Communications. That comment raises a number of arguments and concludes that if the Commission approves the amendment, "it should expressly state that the terms … are not necessarily in compliance with Section 251 [of 47 U.S.C.] and cannot serve as a precedent for any future arbitration conducted under that provision of federal law." A copy of Level 3's comment is attached.

II. REQUEST FOR FURTHER COMMENTS

The comments filed by Level 3 raise certain concerns. First, does the Commission have the authority to find or declare that an interconnection agreement is "not necessarily" in compliance with Section 251 (or Section 252(d)), yet also approve that agreement? *See* 47 U.S.C. § 252(e)(2). Second, 47 U.S.C. § 252(i) states:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

This provision effectively makes any approved interconnection agreement "precedential." Although Level 3 has requested only that the Commission declare that the terms of the amendment are not precedential in a future arbitration conducted under 47 U.S.C. § 252(b), a CLEC that desires these terms does not need to seek arbitration to obtain them.

The examiner requests Verizon Maine, MCImetro and Level 3 to address the following questions, to the extent that the question applies:

1. Can the Commission lawfully find that a negotiated interconnection agreement is "not necessarily" in compliance with 47 U.S.C. § 251 and simultaneously approve the agreement?

2. Does the Commission have any authority to declare that its approval of a negotiated agreement under 47 U.S.C. § 252(e) is not precedential in a future arbitration proceeding? Would such a declaration be meaningful in light of the right, under 47 U.S.C. § 252(i), of other CLECs to obtain the same terms?

3. Were the terms of this agreement essentially required by the judgment of the bankruptcy court?

4. Does Verizon intend that the terms of the amendment to the MCImetro agreement be available to other CLECs?

5. Is it sound public policy to make these terms available to other CLECs? (*See* 47 U.S.C. § (e)(2)(B)(ii).) Or, if the terms were essentially required by the judgment of the bankruptcy court, should they be available only to parties (e.g., MCImetro) subject to that judgment?

6. If it is not sound public policy to allow these terms to be available to other CLECs, is there a lawful way to fashion this agreement (or implement the bankruptcy court's judgment) as something other than an interconnection agreement subject to the requirements of the 1996 TelAct?

Comments shall be filed on or before March 3, 2004.

Dated at Augusta, Maine, this 18th day of February, 2004.

BY ORDER OF THE HEARING EXAMINER

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Peter Ballou